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2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF CALIFORNIA
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7 GORDON BULLOCK,

8 Plaintiff,

9 vs.

10 WASCO STATE PRISON MEDICAL,

11 Defendant

Case No. 1:14 cv 00092 GSA PC

ORDER DISMISSING COMPLAINT AND
GRANTING PLAINTIFF LEAVE TO FILE
AN AMENDED COMPLAINT

AMENDED COMPLAINT DUE
IN THIRTY DAYS

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14 **I. Screening Requirement**

15 Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights
16 action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to magistrate judge jurisdiction
17 pursuant to 28 U.S.C. § 636(c).¹

18 The Court is required to screen complaints brought by prisoners seeking relief against a
19 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
20 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
21 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or
22 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
23 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been
24 paid, the court shall dismiss the case at any time if the court determines that . . . the action or
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28 ¹ Plaintiff filed a consent to proceed before a magistrate judge on March 31, 2014 (ECF No. 11).

1 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. §
2 1915(e)(2)(B)(ii).

3 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
4 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534
5 U.S. 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a
6 short and plain statement of the claim showing that the pleader is entitled to relief” Fed. R.
7 Civ. P. 8(a). “Such a statement must simply give the defendant fair notice of what the plaintiff’s
8 claim is and the grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the
9 liberal pleading standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams,
10 490 U.S. 319, 330 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not
11 supply essential elements of the claim that were not initially pled.” Bruns v. Nat’l Credit Union
12 Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268
13 (9th Cir. 1982)).

14 **II. Plaintiff’s Claims**

15 Plaintiff, an inmate in the custody of the California Department of Corrections and
16 Rehabilitation (CDCR) at the Correctional Training Facility at Soledad, brings this civil rights
17 action against defendant Wasco State Prison Medical Department. Plaintiff claims that he was
18 subjected to inadequate medical care such that it violated the Eighth Amendment prohibition on
19 cruel and unusual punishment.

20 Plaintiff arrived at the Wasco Reception Center on August 6, 2013. Plaintiff informed a
21 nurse that he had hepatitis C. She told Plaintiff that he would see a doctor in a few days.
22 Plaintiff alleges that, despite numerous written requests, he never saw a physician. Plaintiff
23 alleges that on October 27, 2013, he “got a lot sick.” Plaintiff had chest pains, a “very fast
24 beating heart” and cold sweats. On October 29, 2013, Plaintiff was sent to the Primary Care
25 Physician. Plaintiff alleges that the doctor never asked him about chest pains. Plaintiff, now
26 incarcerated at Soledad, he has heart problems and high blood pressure.

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1 **A. Medical Care**

2 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an
3 inmate must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d
4 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 295 (1976)).
5 The two part test for deliberate indifference requires the plaintiff to show (1) “‘a serious medical
6 need’ by demonstrating that ‘failure to treat a prisoner’s condition could result in further
7 significant injury or the unnecessary and wanton infliction of pain,’” and (2) “‘the defendant’s
8 response to the need was deliberately indifferent.” Jett, 439 F.3d at 1096 (quoting McGuckin v.
9 Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds, WMX Techs., Inc. v.
10 Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc) (internal quotations omitted)). Deliberate
11 indifference is shown by “a purposeful act or failure to respond to a prisoner’s pain or possible
12 medical need, and harm caused by the indifference.” Id. (citing McGuckin, 974 F.2d at 1060).
13 Where a prisoner is alleging a delay in receiving medical treatment, the delay must have led to
14 further harm in order for the prisoner to make a claim of deliberate indifference to serious
15 medical needs. McGuckin at 1060 (citing Shapely v. Nevada Bd. of State Prison Comm’rs, 766
16 F.2d 404, 407 (9th Cir. 1985)).

17 Here, the Court finds Plaintiff’s allegations to be vague. Plaintiff sets forth allegations
18 regarding his health care, but fails to name any individual defendants. To state a claim under
19 section 1983, a plaintiff must allege that (1) the defendant acted under color of state law and (2)
20 the defendant deprived him of rights secured by the Constitution or federal law. Long v. County
21 of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006). “A person deprives another of a
22 constitutional right, where that person ‘does an affirmative act, participates in another’s
23 affirmative acts, or omits to perform an act which [that person] is legally required to do that
24 causes the deprivation of which complaint is made.’” Hydrick v. Hunter, 500 F.3d 978, 988 (9th
25 Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “[T]he ‘requisite
26 causal connection can be established not only by some kind of direct, personal participation in
27 the deprivation, but also by setting in motion a series of acts by others which the actor knows or
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1 reasonably should know would cause others to inflict the constitutional injury.’’ Id. (quoting
2 Johnson at 743-44). Plaintiff has not specifically charged each defendant with conduct
3 indicating that they knew of and disregarded a serious risk to Plaintiff’s health, resulting in injury
4 to Plaintiff. Plaintiff may not hold defendants liable simply by alleging a serious medical
5 condition and then charge medical staff in general with the vague allegation that they neglected
6 his condition. Plaintiff must identify individual defendants, and allege facts indicating that each
7 defendant was aware of a specific harm to Plaintiff, and acted with deliberate indifference to that
8 harm. Plaintiff has failed to do so here. The complaint should therefore be dismissed. Plaintiff
9 will, however, be granted leave to file an amended complaint.

10 Plaintiff need not, however, set forth legal arguments in support of his claims. In order to
11 hold an individual defendant liable, Plaintiff must name the individual defendant, describe where
12 that defendant is employed and in what capacity, and explain how that defendant acted under
13 color of state law. Plaintiff should state clearly, in his or her own words, what happened.
14 Plaintiff must describe what each defendant, *by name*, did to violate the particular right described
15 by Plaintiff. Plaintiff has failed to do so here.

16 Further, Wasco State Prison and Wasco State Prison Medical Department, as agencies of
17 the state, are immune from suit. The Eleventh Amendment bars suits against state agencies as
18 well as those where the state itself is named as a defendant. See Natural Resources Defense
19 Council v. California Department of Transportation, 96 F.3d 420, 421 (9th Cir. 1996); Brooks,
20 951 F.2d at 1053; Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (concluding that Nevada
21 Department of Prisons was a state agency entitled to Eleventh Amendment immunity); Mitchell
22 v. Los Angeles Community College District, 861 F.2d 198, 201 (9th Cir. 1989).

23 **III. Conclusion and Order**

24 The Court has screened Plaintiff’s complaint and finds that it does not state any claims
25 upon which relief may be granted under section 1983. The Court will provide Plaintiff with the
26 opportunity to file an amended complaint curing the deficiencies identified by the Court in this
27 order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff is cautioned that he
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1 may not change the nature of this suit by adding new, unrelated claims in his amended
2 complaint. George, 507 F.3d at 607 (no “buckshot” complaints).

3 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what
4 each named defendant did that led to the deprivation of Plaintiff’s constitutional or other federal
5 rights, Hydrick, 500 F.3d at 987-88. Although accepted as true, the “[f]actual allegations must
6 be [sufficient] to raise a right to relief above the speculative level” Bell Atlantic Corp. v.
7 Twombly, 550 U.S. 544, 554 (2007) (citations omitted).

8 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,
9 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565,
10 567 (9th Cir. 1987), and must be “complete in itself without reference to the prior or superceded
11 pleading,” Local Rule 15-220. Plaintiff is warned that “[a]ll causes of action alleged in an
12 original complaint which are not alleged in an amended complaint are waived.” King, 814 F.2d
13 at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord
14 Forsyth, 114 F.3d at 1474.

15 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 16 1. Plaintiff’s complaint is dismissed, with leave to amend, for failure to state a
17 claim;
- 18 2. The Clerk’s Office shall send to Plaintiff a complaint form;
- 19 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file
20 an amended complaint;
- 21 4. Plaintiff may not add any new, unrelated claims to this action via his amended
22 complaint and any attempt to do so will result in an order striking the amended
23 complaint; and
- 24 5. If Plaintiff fails to file an amended complaint, the Court will dismiss this action,
25 with prejudice, for failure to state a claim.

26 IT IS SO ORDERED.
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Dated: November 12, 2014

/s/ Gary S. Austin

UNITED STATES MAGISTRATE JUDGE